IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

LA.App..No. 1468 of 2000()

LAR.67/1998 of PRL.SUB COURT, KOZHIKODE
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APPELLANT:

PATTOLATH MOHAMMED KOYA, SUN FLOWER, PUTHIYARA, CALICUT-4.

BY ADV. SRI.K.P.DANDAPANI
SMT.SUMATHY DANDAPANI

RESPONDENTS:
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1. THE SPECIAL TAHSILDAR, LA, KOZHIKODE.

2. THE MANAGER, CATHOLIC SYRAIN BANK LTD., CALICUT.

3. GOVT. OF KERALA REPRESENTED BY THE DISTRICT COLLECTOR, KOZHIKODE.

BY GOVERNMENT PLEADER SHRI K.V. MANOJ

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 25/06/2007, ALONG WITH LAA 1021/2001 THE COURT ON 9/7/2007 DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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L.A.A..NOs.1468/2000 & 1021/2001

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Dated this the 9th day of July, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

These appeals arise from the judgment in L.A.R. No.67/1998 of the Court of Subordinate Judge, Kozhikode. L.A.A. No.1468/2000 is filed by the claimant and L.A.A. No.1021/2001 is filed by the State.

2. The land was acquired as per notification published under Section 4(1) on 6.5.1994. The award was passed on 31.5.1994 and land was taken possession on 28.7.1994.

3. The Land Acquisition Officer awarded land value at the rate of Rs.41,851/- per cent. The claimant claimed market value at the rate of Rs.10 lakhs per cent and the court below has fixed the land value at Rs.2 lakhs per cent. In L.A.A. No.1468/2000, the claimant seeks enhanced land value at Rs.4 lakhs per cent.

4. Since the State has filed appeal against the said enhancement, we will first deal with L.A.A. No.1021/2001. The claimant has produced Exts.A1 to A5 in support of the claim. Ext.C1 is the report of the Commissioner and Ext.C2 is the sketch. The claimant gave evidence as

P.W.1. The importance of the lie of the property has been spoken to by the claimant and the same is supported by the report of the Commissioner also. The property is situated on the western side of Kannur - Madras Trunk road. There are various public offices, etc. in and around the place where the acquired land is situated.

5. The court below, even though referred to the documents Exts.A1 to A5, for arriving at the market value the relevant data available from the documents have not been discussed except that of Ext.A5. Ext.A5 is the registration copy of an assignment deed dated 28.3.1999. It is admittedly a post notification document and an extent of 5.19 cents of land has been sold for a total amount of Rs.25,95,000/-.

6. The Commissioner in his report gave his opinion that the market value of the property will be of an amount of Rs.4 lakhs to Rs.5 lakhs per cent.

7. We find, on a reading of the evidence that the court below has not properly assessed the evidence to fix the enhanced compensation. After referring to the contentions of the parties, the court below entered a finding that “but on a detailed evaluation and analysis of the entire contentions and evidence on record, it would conclusively prove the case of the claimant that the claimant is entitled to get Rs.2 lakhs as land value under Section 4

(1) notification with all other benefits of the Land Acquisition Act." Apart from stating so, the court below has not fixed the market value in accordance with the well settled legal principles. It is settled law that as far as fixing of market value is concerned, the court below has to evaluate the evidence and documents. Even though some element of guess work is always involved, it must be based on firm foundation consisting of the totality of the evidence, including the sale price of comparable land. Burden is on the claimant to prove by acceptable evidence the claim for enhanced compensation. In this case, there are no comparable sale deeds produced by the claimant. A reading of the report of the Commissioner shows that the opinion of the Commissioner is not based on any relevant and acceptable materials also. Therefore, the submission of the learned Govt. Pleader that the fixation of enhanced compensation was without any material, is correct.

8.In a reference under Section 18, the court below has to fix the market value on the basis of the evidence adduced by the parties. The endeavour should be to arrive at a just and fair compensation. The well established methods is by comparing similar transactions. The potential value of the land can also be assessed by relevant materials. But herein the claimants have not made any effective attempts by producing sale deeds

which would reflect the market value of the land acquired at the time of acquisition. Exts.A1 to A4 do not indicate the market value which could be fixed as on the date of the notification. As already pointed out, Ext.A5 is a transaction representing a post notification one. The same was also not relied upon by the court below. Therefore, the market value now fixed is on the basis of a commission report which, as we have pointed out earlier, is also not based on assessment of any relevant materials. Therefore, the value now fixed by the court below is only on the basis of guess work which is impermissible in law.

Therefore, we remand the matter allowing the parties to adduce fresh evidence. The appeals are disposed of as above. The appellant in L.A.A. No.1468/2000 will be entitled for refund of the court fee paid on the memorandum of appeal.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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Kurian Joseph &
T.R. Ramachandran Nair, JJ.

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L.A.A..NOs.1468/2000 &
1021/2001

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JUDGMENT

9th day of July, 2007